

now Judge Pickering of the Fifth Circuit Court of Appeals, and Judge Bill Pryor, an up-or-down vote.

The only reason they resorted again to this unprecedented obstruction, denying them even the courtesy of an up-or-down vote, is because they knew if allowed to vote, a bipartisan majority of the Senate would confirm those appointments.

Here again, we are entitled to have policy differences and, indeed, we will, but the suggestion that somehow President Bush used these recess appointments in some sort of unauthorized or inappropriate way is false. The fact is, during the course of this country's history, recess appointment power has been used more than 300 times. To suggest that President Bush has somehow gone outside the power conferred upon him under the U.S. Constitution is not true.

Sometimes I am amazed that people can say things with a straight face. I expect them to wink or otherwise indicate they know they are trying to pull a fast one, but the fact is the suggestion, the inference that those speakers would ask the American people to draw from their comments are just not true.

President Clinton used recess appointments. Frequently, former Presidents used recess appointments of one kind or another when they were not able to get their nominees confirmed on the timetable they wanted for whatever reason, but that is a power clearly conferred upon the President under the U.S. Constitution.

Can I ask how much time I have remaining?

The PRESIDING OFFICER. The Senator has used his 15 minutes.

Mr. CORNYN. I ask unanimous consent for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORNYN. Thank you. I thank my colleague from Minnesota for his courtesy.

Finally, I will say that serving on the Judiciary Committee has been a startling experience for this Senator, a new member of the Senate coming, as I did, to this body expecting that all Senators would want to try to work through our differences in a way that reaches consensus and in a way that allows us to do our job.

Unfortunately, the Judiciary Committee has spiraled down into partisan dysfunction in a way that is, frankly, not very pleasant, and it is not doing the best job we can and should be doing for the American people.

The truth is, what we see happening is a handful of special interest groups that seem to be calling the tune, and Senators, unfortunately, responding to that and blocking President Bush's nominees. We saw during the revelation of a number of memos that came to light that, indeed, some of these interest groups were trying to manipulate the outcome in lawsuits that were pending on the court of appeals.

One very sensitive case affecting our entire Nation was an affirmative ac-

tion case. That case involved the University of Michigan's affirmative action policies. The memos reveal that nominees were being blocked and slowpeddled in an effort to have an impact on that litigation. It is not right.

Now I know my colleagues, all of us on the Judiciary Committee, have decried the way in which some of these memos came to light. The truth is, an overzealous, misguided staffer accessed computer files of both Republican and Democrat members of the Senate Judiciary Committee and released those publicly. We have had the Sergeant at Arms conduct an investigation. Indeed, a number of us have asked the appropriate prosecutor to investigate it to see if criminal charges should be brought concerning the way in which these memos came to light. But just as the Pentagon Papers, years ago, were accessed unlawfully, they demonstrate a very real public policy concern that I do not think we can ignore.

There are two things that have happened. One is the taking of the memos, and the other is the inappropriateness of the conduct revealed.

As I close my remarks, I again thank my colleague from Minnesota for his courtesy by allowing me to speak first.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

THE REPUBLICAN ADMINISTRATION

Mr. DAYTON. Mr. President, I ask unanimous consent that I be allowed 20 minutes to make my remarks. I do not believe I will need all that time, but I would ask to have that available.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DAYTON. Mr. President, I say to my good friend from Texas, with whom I shared a very instructive tour of Iraq last July—we sweltered together in 115 degrees—I have the greatest regard for him in working with him on these various matters. I do respectfully say in response to his comment about the 9/11 questions that have been raised, and supposedly my colleagues wanting to have things both ways, his words, I cannot for the life of me figure out how he and others on that side of the aisle could suggest that President Clinton is to blame for something that occurred over 8½ months after he left office, but President Bush is not to blame for something that happened 8½ months after he took office and is not blamed for anything related to it since. I don't understand how that is anything other than trying to have it both ways and also not making much sense at all.

I think both of us would be well served to let the Commission make its determinations and recognize that our most important task is to make sure it never happens again. We share that desire here, for all 100 of us are Americans first and partisans second or third or somewhere else. Let's hope the truth all comes forth so that, most impor-

tantly, we can understand what we need to do to make sure this country is safe every day and night for the rest of my lifetime and yours and all the rest of our children to follow.

I want to shift to another subject. Yesterday's Washington Post had an article about the famous magician, Henry Houdini, and the dispute whether or not his magic tricks should be disclosed to the public. It made me think, as I was looking back on the events that occurred in the Senate this last week, that we have our own magic tricks. One of them is this disappearing legislation trick. Unfortunately, it is one of too many, too clever sleight of hand tricks that are employed in this body. I think, in fact, we need more of a return to reality if we are going to serve the vital interests of the people I represent in Minnesota, and others around the country.

At the start of the week, for those who may not have been following this moment by moment, we were considering a bill that was entitled a JOBS Act. If ever there was a situation facing America and the over 8 million Americans who do not have jobs right now that needs a serious dose of reality, that is at the top of the list. Senator TOM HARKIN, my colleague from Iowa, was offering an amendment that would either have this body choose to support or oppose the Department of Labor's taking overtime pay, the 1½ times an hourly pay required for those working overtime. In this case, this group would be over 8 million Americans workers—police officers, other law enforcement officials, firefighters, teachers, middle-class working Americans. These are hard-working Americans working overtime to earn extra money to improve their lives or just to try to make ends meet; to raise their families, send their kids to college, or just get them through junior high school; take care of an aging or sick parent, help pay for the prescription drugs for those elderly parents or nursing homes for them, which costs about the same these days.

We had an agreement reached before the bill came to the floor between the Republican and Democratic leaders that there would be a vote on the Harkin amendment. That was the promise that was made to all of us. But suddenly here was this Senate's disappearing act, this sleight-of-hand trick that even the famous Harry Houdini could not have matched. That bill just disappeared from the Senate floor and was replaced by another bill which was voted upon and passed last night.

Monday, now, we are told we will be taking up another bill but not the JOBS Act. Where did it go? When will it come back? Will it come back at all? Actually, that pretty well describes the Republican job record under President Bush. Millions of jobs disappear. No one knows when they are coming back. No one knows if they are coming back. Secretary of Treasury John Snow, testifying before a congressional committee just 2 weeks ago, said the lack

of job recovery in this country was "a mystery."

Vice President CHENEY doesn't even seem to know the jobs are leaving. He said earlier this month:

If the Democratic policies had been pursued over the last 2 or 3 years, we would have not had the kind of job growth we have had.

At the time he offered that compelling insight, the country officially had 2¼ million fewer jobs than when he and President Bush took office just over 3 years ago. So I would have to agree with the Vice President on that point; if the Democratic policies had been pursued over the last 2 or 3 years, we would not have had the kind of job growth we have had. Perhaps he was confused and was referring to the kind of job growth Halliburton has had instead of the United States.

The Vice President, by the way, has shown his own disappearing magic tricks. Just before he became Vice President, in the 5 years preceding that time, he was the chief executive officer of Halliburton Corporation, which is the world's largest oil and gas services company. It is also now the largest contractor for American forces in Iraq having received contracts worth over \$11 billion in the last year, most of them without any competitive bidding.

Vice President CHENEY reported earnings of \$44 million during his 5 years there. He claims he has "severed all my ties" with that company. Yet he continues to receive deferred compensation worth approximately \$150,000 a year, and he has stock options worth more than \$18 million. That is the executive version of overtime pay. He gets paid for hours he hasn't worked after he has left the company.

The Vice President has announced he will donate the proceeds from his sale of the stock options at some point in the future to charity, and that is a good disappearing taxes trick because that charitable deduction eliminates taxes on that amount of future income, \$18 million, which is presumably why he is waiting to give that money to deserving charities until he can make even more of that money again.

But the even more curious magic trick, according to an article in *New Yorker* magazine by Jane Mayer last month, on the Vice President's own official biography posted on his White House Web site, he has been a "businessman," but any mention of his 5 years as chief executive officer of Halliburton Corporation just before he became Vice President has disappeared. He got paid over \$44 million, he has over \$18 million more still to come, and it is not even worth mentioning? I guess that is what "severing all my ties with the company" means with the Vice President. He keeps getting paid but stops mentioning it.

President Bush has his own missing jobs magic tricks. He tries to make more jobs appear than really exist. Last month, he released a report called the Economic Report of the President. It forecast 900,000 more jobs for that

month than actually existed. That slight discrepancy was perhaps while the Secretary of Labor, Elaine Chao, whose agency publishes the Economic Report of the President, tried to make President Bush's signature on the report disappear. She said 3 weeks ago, after the report was made public: "He doesn't sign the report."

She is going to have to make a lot of page 4's disappear where the signature, "George W. Bush," or some version of that name, certainly looks to exist. But maybe the signature, like the 900,000 jobs, are just illusions.

Secretary Chao, who has done some very good things on behalf of Minnesota, for which I am very grateful to her, was also reportedly one of the people who wanted the Senate's vote on the Harkin amendment to disappear. After all, it is her rule, by administrative fiat, that is the one revoking those overtime protections for 8 million of her fellow Americans.

There is no magic in that trick, for those are real Americans and their families. It is a mean trick. It is an unfair trick. It is being performed by one unelected Cabinet official, although I suspect there are some elected officials behind her. And we, the elected representatives of those 8 million Americans, are told we will not be allowed to vote on that matter. Who claims to have that right to tell us that we can't vote, after we have been promised that we would have that opportunity to do so? Whoever it is may have the power under Senate rules, but they don't have the right. And they are wrong to do it.

Meanwhile, the President is out looking, himself, for those 900,000 missing jobs that weren't there. Last month, at a carefully staged and scripted meeting with some business owners that was designed to show how the President's big tax cuts for the rich and super rich, which the majority of colleagues here passed—how they are fueling economic recovery and job creation across America, one business owner proudly disclosed that as a result of the President's tax cuts worth an undisclosed amount of money to him personally, he might be able to hire two or three people.

The President, according to the report, seized that comment like a drowning man grabbing a floating leaf. The President said:

When he [the businessman] says he's going to hire two more, that's really good news. A lot of people are feeling confident and optimistic about our future, so they can say I am going to hire two more.

They can sit here and tell the President in front of all the cameras, I am going to hire two more people. That is confidence. That is pretty confident, inspiring stuff, isn't it? Of course, the President has an undergraduate degree from Yale and an MBA from Harvard, and presumably knows math himself. But I will still point out it takes a lot more than a business owner feeling optimistic about hiring two people to make his job forecast for the last

month reality. At two jobs per televised Presidential meeting—bear with me, I only have one Yale undergraduate degree, but it was cum laude—it will take 450,000 televised Presidential meetings to make up for the missing 900,000 jobs. That is the last month. That is only part of the over 2¼ million jobs that have disappeared since the President started his job in January of 2001, which partly explains why he is applying for 4 more years of overtime. It also explains why, in the view of this American, he should not get it.

This part of the act is a little confusing, even for a magic show. Bear with me and follow closely. For all of those lost jobs in our economy, we are not yet able to bring them back. Yet the Senate JOBS bill disappeared without being voted on. So the American people should be concerned. Right? The answer is no, because it is really not a jobs bill. It is called a "jobs" bill, but it is not really about creating jobs. It is about giving tax breaks to the corporations—\$114 billion worth of tax breaks which they might or might not use to create jobs which might or might not be in the United States. It was given the title of the JOBS Act even though it was primarily not about restoring those missing American jobs.

In fact, it was given that title probably because it is not a jobs bill, but its sponsors wanted the American people to believe it is a jobs bill. They will think, Wow, that is a good Congress. They just passed a JOBS Act, although we didn't pass the JOBS Act. It disappeared. But not to worry, because again it won't do that much to add jobs, anyway—at least not the way it is drafted.

How is that for a sleight-of-hand trick? Masters of illusion right here in Washington. Houdini and David Copperfield would have to be amazed.

But, unfortunately, all this hocus-pocus—now you see it, now you don't—leads us to believe one thing, but it is really something else. All of those deceptions do not deal with reality. As my colleagues know, each lost job is some American's very real nightmare. Being unemployed for so long they are using up their unemployment compensation, have little or no income and still can't find a decent job is no illusion.

The average length of time for America's 8 million unemployed citizens who have been out of work is now the longest in 20 years. The number of manufacturing jobs and good, decent-paying jobs in this country is the lowest in 53 years.

That is real. The hardships, the pain and suffering of those lost jobs have caused the real Americans, good people in Minnesota—and I am quite sure everywhere else in this country—people who want to work, who do not want a handout, who want jobs. They want the chance to work and earn their American dreams, and to work overtime and get paid for it.

By the way, our colleagues should recall that overtime—the 1½ times or more requirement of additional pay for those additional hours worked—provides an incentive for expanding companies, to add new jobs, to replace old ones they have taken away, rather than paying the 1½ times for that additional work they need. Employers have a choice. They can choose to pay overtime instead of adding additional jobs. Overtime is good pay for those workers who want to earn more money. It is good for the economy because those additional dollars they earn are almost always going immediately right into spending for needed products and services. But it is also a good inducement for creation of new jobs to increase production.

But even my Republican colleagues and evidently the Bush administration don't want us to even have a vote on this amendment on what they are calling a JOBS bill. They are also complaining to my colleagues and me on this side of the aisle that we want to offer some other amendments to change this bill. Yes, we do. They say our amendments are not germane. That is legislative language for not being relevant, not related to the content of the bill we are considering. Overtime pay is certainly relevant to the people in Minnesota I represent—police officers, firefighters, laborers, and nurses.

Another amendment which Republicans say is not germane would extend unemployment benefits. During the last 2 months alone 760,000 Americans have exhausted their unemployment benefits. That is no illusion. That is real-life hardship and pain for real Americans and for their families.

I think the sponsors of this so-called JOBS Act should explain to those 760,000 of their fellow citizens why restoring their unemployment benefits is not germane or is not relevant to their bill. I think those 760,000 Americans would then see clearly this so-called JOBS Act is not relevant to jobs—not to their jobs, not to restoring jobs, not to replacing jobs, not to preventing more jobs from being sent overseas.

In fact, one of my amendments, which I think is highly germane, would eliminate the \$36 billion for tax breaks for U.S. corporations for their overseas operations. Why in the world would we want to provide more tax incentives for U.S. corporations to create more jobs in other countries? We can't prevent it, but we certainly shouldn't encourage it. We shouldn't use more American tax incentives to put more Americans out of work and add to budget deficits their children will have to pay for, if they are lucky enough to have jobs.

My amendment would eliminate that lunacy. It will demand every dollar in this \$114 billion of corporate tax cuts be justified according to one clear measure: How will it result in more jobs, new jobs, and restore jobs in the United States for our citizens now? Not maybe, not probably, not next month, but definitely and provably and now.

That is the kind of JOBS Act America needs. That is the JOBS Act Americans need, and they need it done now. People losing overtime need this bill now. People who have lost their unemployment benefits need this bill now. People who are losing jobs still at this time in America overseas need this bill now—not the JOBS bill, but the one we want to amend to make a real jobs bill for America.

I am for the majority leader bringing this bill back to the floor next Monday. We are scheduled to bring up welfare reform. That is an important subject. But the experts would tell me the No. 1 key to the successful welfare program is a job at the end of the program.

Let us bring the JOBS Act, so-called, back first and scrutinize every single dollar it proposes to spend for its job effect for Americans now. No more magic tricks. This is the time for honest, truthful reality. Let us get to work starting next Monday in the Senate putting America back to work—all Americans. That would be real bipartisanship.

Thank you, Mr. President. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OUTRAGEOUS CHARGES BY RICHARD CLARKE

Mr. FRIST. Madam President, in about 30 minutes or so, we will be closing. Before doing that, I want to spend a few minutes talking about an occurrence and a series of events over the course of the past week stemming from comments and testimony by a former State Department civil servant named Richard Clarke.

In a book that is scheduled to be released for sale by the parent company of the CBS network, Mr. Clarke makes the outrageous charge that the Bush administration, in its first 7 months in office, failed to adequately address the threat of Osama bin Laden. There has been a fulminating in the media and by some Senators about this book. I want to take this opportunity to reflect a bit on this, because I am deeply disturbed by the charges that have been made by Mr. Clarke. I am disturbed, in part, by the way it has been handled by some of our colleagues and by the media itself.

I am troubled by the charges. I am equally troubled someone would sell a book that trades on their former service as a Government insider with access to classified information, our Nation's most valuable intelligence, in order to profit from the suffering surrounding what this Nation endured on September 11, 2001.

I am troubled that Senators on the other side of the aisle are so quick to

accept such claims. I am troubled that Mr. Clarke has had a hard time keeping his own story straight. I don't personally know Mr. Clarke—I have met him—although I take it from press accounts that he has been involved in the fight against terrorism for the past decade.

As 9/11 demonstrates, that decade was a period of growing peril, a period of unanswered attacks against the United States. It is self-serving, I believe, that Mr. Clarke asserts that the United States could have stopped terrorism if only the three Presidents he served had listened to Mr. Clarke. In fact, when Mr. Clarke was at the height of his influence as the terrorism czar for President Clinton, the United States saw the first attack on the World Trade Center, saw the attack on the U.S. Air Force barracks in Saudi Arabia, the attacks on the two U.S. embassies in Africa, the attack on the USS *Cole*, and the planning and implementation for the 9/11 attacks.

The only common denominator throughout those 10 years of unanswered attacks was Mr. Clarke himself, a consideration that is clearly driving his effort to point fingers and to shift blame. He was the only common denominator throughout that period.

This pointing fingers, this shifting blame I will come back to because if we look at all the data and all the evidence, it becomes the common theme.

While the reasons may be open to debate and discussion, the previous administration's response to these repeated attacks by al-Qaida was clearly inadequate—a few cruise missiles lobbed at some, at best, questionable targets. Al-Qaida could only have been encouraged by their record of success in the absence of a serious and a sustained response by the United States during that period.

After 10 years of policies that failed to decisively confront and to eliminate that threat from al-Qaida, Clarke now suggests that those first 7 months of the Bush administration is where the blame should lie. Again, after 10 years of attack after attack with an inadequate response, with Mr. Clarke being the common denominator, to put the blame almost entirely on the first 7 months of the Bush administration to me is shifting blame and finger-pointing.

What is interesting is that what we heard this week has not always been Mr. Clarke's view of the events leading up to September 11. This week, a transcript was released of a press interview that Mr. Clarke gave in August of 2002, not that long ago. I will submit for the RECORD the full transcript, but I do want to cite a portion of this interview reviewing in glowing terms the policies of the Bush administration in fighting terrorism. I will be quoting exactly from the interview:

Richard Clarke:

Actually, I've got about seven points. Let me just go through them quickly.

Again, these are Mr. Clarke's words: